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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,871	11/24/2000	Kenneth B. Higgins	5113	4059
7590	01/27/2004		EXAMINER	
Terry T. Moyer P.O. Box 1927 Spartanburg, SC 29304			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/721,871	HIGGINS ET AL.	
Examiner	Art Unit		
Cheryl Juska	1771		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 December 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-51,57-85,123-126,128-130,132,133,136-142 and 145-149 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-51,57-85,123-126,128-130,132,133,136-142 and 145-149 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 11, 2003, has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2, 4-7, 14, 16-35, 38-50, 56-60, 62-67, 69-73, 75-80, 123-126, 128-130, 132, 133, 136-142, and 145-149 stand rejected under 35 USC 103(a) as being unpatentable over US 4,552,857 issued to Higgins in view of 5,610,207 issued to DeSimone et al., as set forth in section 7 of the last Office Action.

4. Claims 3, 8, and 15 stand rejected under 35 USC 103(a) as being unpatentable over the cited Higgins and DeSimone patents as set forth above, and in further view of EP 048 986 issued to Dow, as set forth in section 8 of the last Office Action.

5. Claims 36, 37, 51, and 81-85 stand rejected under 35 USC 103(a) as being unpatentable over the cited Higgins and DeSimone patents as set forth above, and in further view of US 5,540,968 issued to Higgins, as set forth in section 9 of the last Office Action.

6. Claims 9-13, 61-68, and 74 stand rejected under 35 USC 103(a) as being unpatentable over the cited Higgins and DeSimone patents as set forth above, and in further view of US 5,616,200 issued to Hamilton, as set forth in section 10 of the last Office Action.

Response to Arguments

7. Applicant's arguments and the Kilpatrick Declaration filed on December 11, 2003, have been considered but have not been found persuasive.

8. Specifically, applicant argues that the rebond foam materials of de Simone have reduced tensile and tear strengths that would teach away from incorporating the rebond into a carpet tile (Remarks, page 2, 1st paragraph). Additionally, the Kilpatrick Declaration attests that one skilled in the art would not have been motivated to substitute the de Simone rebond foam for the foam of Higgins "since strength and resiliency requirements of the tile would be expected to be adversely affected even in the same foam densities were utilized" (Declaration, section 14).

9. In response, it is first argued that applicant's arguments are not commensurate in scope with the claims. The presently claimed invention is not limited to a particular tensile or tear strength. Secondly, said Declaration is a subjective, opinion declaration, rather than a fact based, objective declaration. No evidence has been submitted to support the opinion. Additionally, applicant has not shown that the rebond foam of de Simone would in fact be unsatisfactory for the foam layer of the Higgins carpet.

10. With respect to applicant's assertion that the carpeting embodiment of de Simone is limited to a sandwich structure in which the rebond layer forms a core layer (Remarks, page 2, 3rd paragraph). It is acknowledged that the de Simone reference teaches a carpet embodiment

wherein the foam mixture is placed between a fabric carpet backing and another layer, which is preferably a foam plastic material. However, it is asserted that one skilled in the art would readily understand that the rebond layer of de Simone could be used alone, used with a single surfacing layer, or used with dual surfacing layers (i.e., sandwiched), depending upon the desired end use and method of manufacture. Additionally, it would be readily apparent to one skilled in the art that the addition of surfacing layers would inherently improve the tensile and tear strength properties, as compared to the rebond foam without said surface layers. Thus, applicant's arguments are found unpersuasive and the above rejection is maintained.

Conclusion

11. This is a RCE of applicant's earlier Application No. 09/721,871. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however,

event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.



CHERYL A. JUSKA

PRIMARY EXAMINER